

DA 98-662

01-11-1964

**In the Matter of**

**Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Old Forge and Newport Village,  
New York)**

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) **MM Docket No. 97-179**  
) **RM-9064**  
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**Released: April 10, 1998**

**Reply Comment Date:** June 16, 1998

1. At the request of 21st Century Radio Ventures, Inc. ("petitioner"), the Commission issued a Notice of Proposed Rule Making, 12 FCC Rcd 11972 (1997), proposing the reallocation of Channel 259A from Old Forge, New York, to Newport Village, New York, and the modification of petitioner's construction permit (BPH-940203MC) to specify Newport Village as the station's community of license. Comments were filed by the petitioner.

2. In the Notice, we questioned whether petitioner's proposal would result in a preferential arrangement of allotments since its adoption would result in the creation of both a white and gray area totaling 59 square kilometers with a population of 229 people. Further, while recognizing that there is an application for Channel 231A at Old Forge (BPH-961212MF) before the Commission, the staff study found that activation of this channel would not serve all of the population within the newly created white and gray area. Therefore, petitioner was requested to provide further information to aid us in determining whether the change of community proposal would result in a preferential arrangement of allotments.

3. In comments, petitioner states that population calculations using the more accurate block centroid retrieval method it has determined that the white and gray areas identified by the Commission are unpopulated.<sup>1</sup> Further, even using the older uniform distribution method for population calculations, petitioner contends that the population within the white and gray areas should be considered as de minimus, citing Seabrook, Huntsville, Bryan, Victoria, Kenedy and

<sup>1</sup> The Commission has stated that because the Census Bureau recognizes the Block Centroid Method as a more accurate calculation method, we will also accept this method and would rely on the most accurate method presented to resolve disputes. See *Grandfathered Short-Spaced FM Stations*, 12 FCC Rcd 11840, 11845 (1997).

George, West, Texas, 10 FCC Rcd 9360 (1996). Finally, it states that it has lost the transmitter site specified in its Old Forge construction permit due to circumstances beyond its control. Thus, it may not be possible to specify a new transmitter site, if the station remains at Old Forge, which will cover the same area. However, in addition to reallocating Channel 259A to Newport Village, petitioner now requests that Channel 223A be allotted to Old Forge. It states that it will promptly apply for use of the channel and will endeavor to locate a transmitter site which will provide service to the white and gray areas identified in the Notice. In support of this proposal, it cites Llano and Marble Falls, Texas, 12 FCC Rcd 6809 (1997), where the Commission granted a change in the community of license from Llano to Marble Falls and allotted a new channel to Llano based upon the pledge of the petitioner to apply for the channel.

4. We are issuing this Further Notice in view of petitioner's comments requesting the allotment of Channel 223A to Old Forge. Channel 223A can be allotted to Old Forge in compliance with the Commission's minimum distance separation requirements with regard to all domestic allotments without the imposition of a site restriction.<sup>2</sup> The allotment is short-spaced to Station KFQR-FM, Channel 223C1, Montreal, Quebec, Canada. Therefore, since Old Forge is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence in this allotment as a specially negotiated short-spaced allotment will be requested from the Canadian government.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Newport Village, New York	--	259A
Old Forge, New York	231A, 259A	223A, 231A

6. Parties may comment on the proposal to allot Channel 223A to Old Forge. We will not accept counterproposals with regard to the reallocation of Channel 259A from Old Forge to Newport Village, since an opportunity for the filing of such counterproposals has already been afforded. However, counterproposals may be filed with regard to the proposed allotment at Old Forge.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

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<sup>2</sup> The coordinates for Channel 223A at Old Forge are 43-42-42 North Latitude; 74-58-24 West Longitude.

8. Interested parties may file comments on or before June 1, 1998, and reply comments on or before June 16, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James L. Primm  
President and Counsel  
21st Century Radio Ventures, Inc.  
530 Wilshire Blvd., Suite 301  
Santa Monica, CA 90401  
(Petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

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**APPENDIX**

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments: Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.